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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,219	03/26/2004	Ephraim Jeff Gutmark	139121	1927

7590 06/25/2007  
John S. Beulick  
Armstrong Teasdale LLP  
Suite 2600  
One Metropolitan Square  
St. Louis, MO 63102

EXAMINER
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RODRIGUEZ, WILLIAM H

ART UNIT	PAPER NUMBER
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3746

MAIL DATE	DELIVERY MODE
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06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/811,219

Applicant(s)

GUTMARK ET AL.

Examiner

William H. Rodriguez/

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/3/04;4/2/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This is the first office action in response to the preliminary amendment filed on 08/03/2004.

#### *Claim Objections*

1. Claim 7 is objected to because of the following informalities:

Claim 7 improperly depends from claim 1 because the recitation "said discharging air from the manifold..." is first positively recited in claim 3. Appropriate correction is required.

#### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of **copending Application No. 10/810,142**. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

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Claims 1-20 of the instant application are merely broader than claims 1-20 of the copending application'142. Nevertheless, the more specific claims 1-20 of the copending application'142 "anticipates" the broader claims 1-20 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4, 8, 14, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dorris, III et al (US 6,308,898).

Dorris (particularly figures 1-3) teaches a gas turbine engine comprising: a core engine nozzle, a fan nozzle, a noise suppression system coupled 42 to at least one of said core engine nozzle and said fan nozzle, said noise suppression system receiving compressed air from said gas turbine engine and being selectively operable by an actuation valve 48 such that air discharge from the noise suppression system generates a flow control mechanism in the gas turbine exhaust flowpath (see abstract).

Since Dorris has the same structure as claimed, it is inherent that Dorris' device would be able to perform the recited method steps.

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6. Claims 1, 4, 8, 14, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw (US 5,092,425).

Shaw (particularly figures 1-3) teaches a gas turbine engine comprising: a core engine nozzle, a fan nozzle, a noise suppression system coupled (47, 43) to at least one of said core engine nozzle and said fan nozzle, said noise suppression system receiving compressed air from said gas turbine engine and being selectively operable by an actuation valve 45 such that air discharge from the noise suppression system generates a flow control mechanism in the gas turbine exhaust flowpath (cl. 4 ll. 15-57).

Since Shaw has the same structure as claimed, it is inherent that Shaw's device would be able to perform the recited method steps.

7. Claims 8 and 15 rejected under 35 U.S.C. 102(e) as being anticipated by Nesbitt et al. (6,718,752).

Nesbitt (particularly figures 1-7) teaches a gas turbine engine comprising: a core engine nozzle, a fan nozzle, a noise suppression system coupled 16 to at least one of said core engine nozzle and said fan nozzle, said noise suppression being selectively operable and generating a flow control mechanism in said gas turbine exhaust flowpath (cl. 4 ll. 50-61).

### ***Contact information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /William H. Rodríguez/ whose telephone number is 571-272-4831. The examiner can normally be reached on Monday-Friday 7:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Rodríguez/  
Primary Examiner  
Art Unit 3746

6/14/07